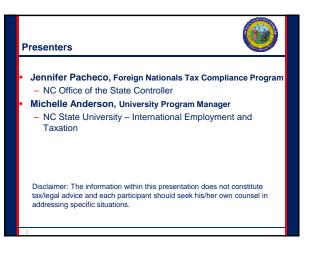
# FOREIGN NATIONALS TAX COMPLIANCE TRAINING

"How To Optimize Your Processing of Foreign Nationals and Current Issues Update"

### August 6th, 2014



### Training Agenda

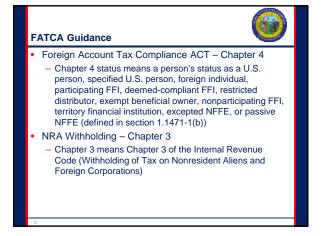
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- Requirements of Paying a Foreign National
- FATCA Guidance
- Review of Forms Issued by FATCA
- How to Establish a Foreign National (Audit) File
- Regulation Updates/Awareness of Current Issues

### **Requirements of Paying a Foreign National**

- All compensation for services performed in the United States is subject to taxation unless an exception applies
- Taxation depends on his or her U.S. tax status –
  resident alien or nonresident alien for tax purposes
- U.S tax residency status depends on his or her U.S. immigration status and U.S. presence over a 3-calendar year period.
- A resident alien, like a U.S. Citizen is subject to U.S. tax on worldwide income, even if the individual resides and works abroad, unless an exception applies.
- A nonresident alien is subject to U.S. taxation on U.S. source income and income effectively connected to the conduct of a U.S. trade or business (ECI), unless an exception applies.

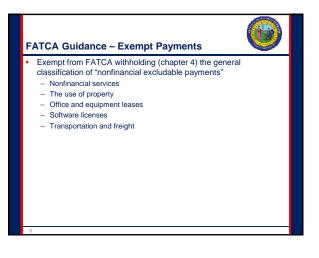
### Requirements of Paying a Foreign National (cont

- All payments made by an employer to or on behalf of an employee, including cash and the FMV of benefitsin-kind, are wages subject to payroll taxes, unless an exception applies.
- Document the exception by submitting a completed form, signed under the penalties of perjury, to the employer or payer, otherwise the exception does not apply.
- The IRS enforces withholding by collection the tax, plus penalties and interest, from the payer who fails to withhold or to collect the necessary form for the exemption from withholding.



### FATCA Guidance (cont.)

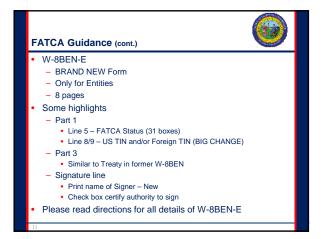
- Foreign Account Tax Compliance ACT Chapter 4
  - Applies to U.S.-Source income that is fixed or determinable
  - annual or periodical (FDAP) unless
  - Payment is FATCA-exempt
  - Payee is a FATCA-exempt beneficial owner, or
  - Payee is FATCA-excepted based on a valid withholding certificate or documentation
  - Reportable on 1042-S
  - Tax treaty exemptions do not apply for FATCA withholding purposes
- Implementation 12/31/2014, per Notice 2014-33 and IRS Official Public Statements for non FATCA payments Passes the FATCA Rules
  - NRA Withholding Chapter 3
  - Determine application and potential withholding exception is available
  - Reportable on 1042-S



### FATCA Guidance – New Presumptions

- Income for both FATCA and NRA withholding purposes is presumed to be U.S.-source income unless the payer has evidence that the payment is foreign-source
- Pay for services performed outside the United States which is foreign-source should be so indicated in contracts and invoices.
- An entity is presumed to be foreign unless the payer has a valid Form W-9 or other documentary evidence that the entity is domestic
  - No longer allowing the "eyeball test" to exempt U.S. Corporations and Financial institutions from Form 1099 reporting.

### FATCA Guidance (cont.) W-8BEN Only for individuals Requires a foreign taxpayer identification number or date of birth (identification purposes in information exchange). Request country of citizenship (this may not be the same as country of residence for treaty benefits) Changes to form - Part 1 • Line 2 - Country of Citizenship Line 3– Type of Beneficial Owner – Removed Line 6 – Foreign TIN – No longer states Optional • Line 9 - Date of Birth - New Part 2 Simplified Signature line Print name of Signer - New





### Additional Forms

Form 8233 - Exemption from Withholding on compensation for Independent (an certain Dependent) Personal Services – last updated June 2011

- Purpose: To claim tax treaty withholding exemptions from: • Compensation for independent personal services performed in
- the U.S.
  Compensation for dependent personal services performed in
- the U.S.

  Noncompensatory scholarship or fellowship income and
- personal services income from the same withholding agent.

## Additional Forms (cont.) Form 8233

- Answer all applicable questions COMPLETELY
- Specify the tax year
- Attach the required statement described in line 10 for foreign student, trainee, professor/teacher, or researcher
- Complete 11-14 in sufficient detail to allow the IRS to
- determine the tax treaty benefit you are claiming.Claim the proper number of personal exemptions on line 15.
- Complete required certification on Part 3.

### Additional Forms Example

Employee and Self-Employment

- Example: A nonresident alien is primarily present in the United States as a professor, but also is occasionally invited to lecture at another educational institution. These lectures are not connected with his teaching obligations but are in the nature of self-employment.
  - For each year the professor must complete TWO forms 8233 and give one to each withholding agent to claim tax treaty benefits on the separate items of Income.
  - · What issues do you see with this....are there any?

### Additional Forms Example (cont.)

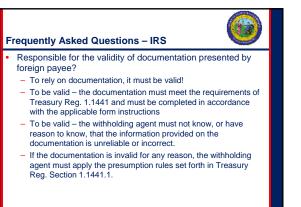
Noncompensatory Scholarship

 Example: XYZ University awards a scholarship to Judy, a nonresident alien student. The only condition of scholarship is that Judy attends classes and maintains a minimum level of academic performance. The scholarship income is not compensatory because Judy is not required to perform services as an employee as a condition for receiving the scholarship

### Additional Forms (cont.)

Form W-4 - Employee's Withholding Allowance Certificate

- Line 2 Required to enter SSN
- Line 3 Check single box
- Line 5 Claim 1 withholding allowance
- Unless from Canada, Mexico, or South Korea; a student from India; or a U.S. national – claim additional allowances
- Line 6 NRA above dotted line
- Line 7 DO NOT claim you are exempt



### Are you still awake????

- Where do you keep your Tax Assessment Documentation?
   A. Human Resource Maintains this in the HR File
  - B. We maintain a separate file
  - C. We don't maintain any records of tax assessments
  - D. All the above.
  - E. This doesn't apply to me.

### Please chat in your answer

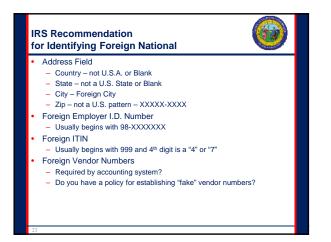
Creating a Foreign National File
Where do I start?

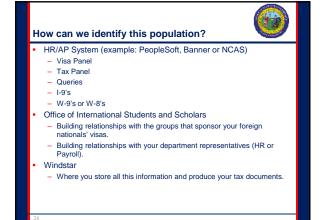
Who is your population?
How do I ensure I appropriate documentation?

Procedures for annual renewals/changes
New Foreign National

Tax Assessments August
Tax Assessments January
Friendly Reminders





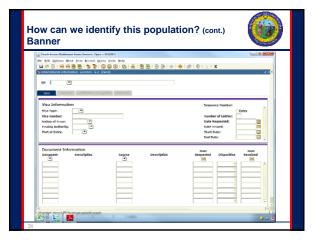


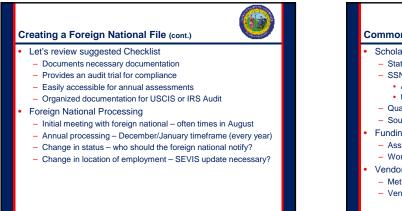
### How can we identify this population? (cont.)

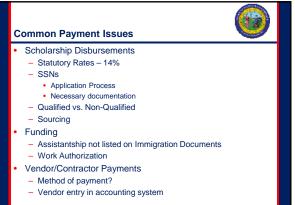
- Critical Questions Visa Panel:
- Who updates your visa panels?
- Are you utilizing this panel properly?
- Is the information in this panel accurate?
- Are you tracking data/expirations?

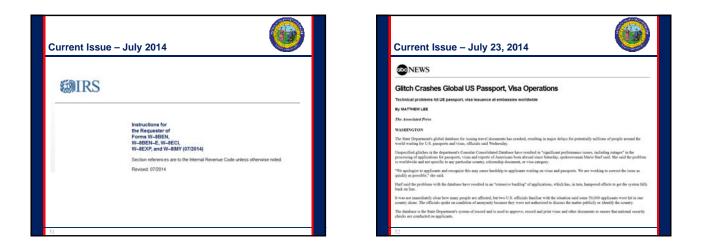


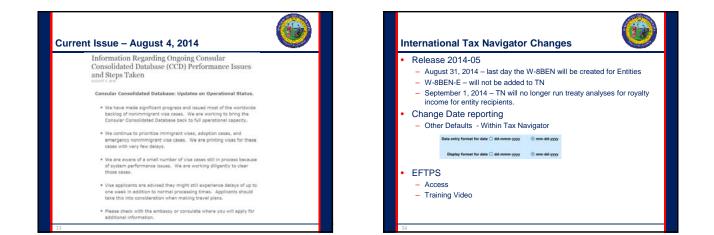
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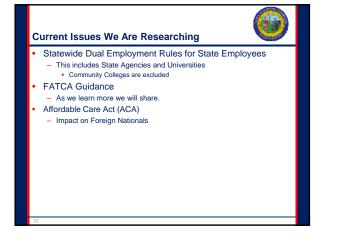


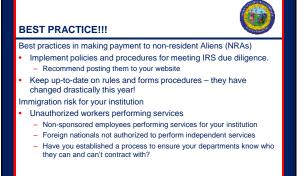












### Summary

- Review of the rules as they relate to Foreign National Taxation
- Knowledge of minimal FATCA Guidance
- Awareness of changes to forms
- How to identify your population to create foreign national files
- Familiar with regulation updates and current issues
- Be prepared for an IRS audit where is your audit trail?????



### **Contact Information**



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- Any questions that are not handled within this presentation will be responded to via email.
- Follow-up questions can be submitted to Jennifer Pacheco, with the NC Office of the State Controller, at <u>jennifer.pacheco@osc.nc.gov</u> or 919-707-0764.
- Additional Resources Michelle Anderson, at <u>michelle.anderson@ncsu.edu</u>.
- For additional training opportunities please visit:
- http://www.osc.nc.gov/Foreign Nationals/training.html

